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# **THE LAW AND COMPUTERS**

**VOL. III**

**1984**

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THE LAW AND COMPUTERS  
MATERIALS - 1984

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Volume III

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## THE LAW AND COMPUTERS 1984

### Volume One:

Introduction  
Preface  
Introduction to Computer Technology

### Session 1

The Information Revolution [to explore the socio-economic impacts of the information revolution]

- A. Introduction
- B. Employment Debate
- C. The Necessary Response: An Industrial Strategy?
- D. The Role of Law

### Session 2

The Technology and its Industries [an outline of the technology of automation and a survey of the participants in the industry and modes of marketing]

- A. Overview of the Industry Structure
- B. Marketing

### Session 3

Private and Public Law Perspectives [explore concept of information as "property", a "resource", a "commodity"; appropriateness of property-oriented models for "ownership" of information]

- A. The Nature of Information
- B. Proprietary Rights in Information
- C. Equitable Obligations of Good Faith

### Session 4

Industrial Property Perspectives I [explore protection of information through the law of trade secrets; breach of confidence]

- A. Definition of Trade Secret
- B. Historical Development of Trade Secret Law
- C. Common Law Protection
- D. Legislative Reform

### Session 5

Industrial Property Perspectives II [explore protection of software and data bases through patent and copyright law]

- A. Patent
- B. Copyright
- C. Overall Protection

Volume Two:

Session 6      Information and Data Bases [explore issues of handling of data and legislative restrictions on its use; privacy; freedom of information; trans-border data flow]

    A. The Right of Privacy  
    B. Freedom of Information  
    C. Trans-border Data Flow

Session 7      Contracting for System Usage [explore methods and structures for distribution of hardware and software products; antitrust constraints]

    A. Distribution Methodologies  
    B. Contracting for System Usage  
    C. Statutes

Session 8      Special Contracting Situations [explore issues relating to software development, multiple vendors, international transactions]

    A. Software Development Contracts  
    B. Service Bureau Contracts  
    C. Multi-Vendor Agreements

Session 9      Taxation Issues [review nature of software under taxing statutes, including income tax, provincial sales tax, customs duties, withholding taxes]

    A. Income Tax Considerations  
    B. Retail Sales Tax  
    C. Federal Sales Tax  
    D. Customs Duty

Volume Three:

Session 10      Remedies [explore applicability of tort principles such as misrepresentation, detrimental reliance, Hedley Byrne principles, products liability, liability for failure to use technology; contract issues such as fundamental breach and implied warranty]

    A. Contract Remedies  
    B. Tort Remedies

Session 11

The Litigation Perspective [explore law of evidence in relation to computer-generated business records and computer-based analyses prepared for litigation; litigation support systems]

- A. Computers and the Law of Evidence
- B. Litigation Support Systems
- C. Discovery of Computer-Based Information

Session 12

Criminal Law Perspectives [explore concepts of computer abuse and applicability of criminal sanctions to unauthorized access to systems, taking and copying software and data bases]

- A. The Problem Defined
- B. The Current Law
- C. Justifying the Use of Criminal Law
- D. Proposals for Change

Session 13

Commercial Law Perspectives [the challenge of automating paper-based transactions in fields of banking, securities, land registration and trade]

- A. Electronic Funds Transfer Systems
- B. The Canadian Depository for Securities
- C. Computerized Shipping Documentation



SESSION X: REMEDIES

A. Contract

Burroughs Business Machines Ltd. v.  
FeedRite Mills (1962) Ltd. (1973),  
42 D.L.R. (3d) 303 (Man.C.A.).

X-1

Public Utilities Commission of City of  
Waterloo v. Burroughs Business Machines  
(1974) 52 D.L.R. (3d) 481 (Ont. C.A.).

X-5

Grayson Electric (1970) Ltd. v. Burroughs  
Business Machines Ltd., April 10, 1980,  
unreported, B.C.S.C.

X-14

Consumers' Association of Canada v.  
Hamilton-Avret International (Canada)  
Ltd. and Avret Inc., Dec. 6, 1983,  
unreported, Ont.S.C.

X-26

Listo Products Ltd. v. Philips Electronics  
Ltd. et al, Dec. 2, 1983, unreported,  
B.C.S.C.

X-37

B. Tort

Tapper, Colin, Computer Law, 3rd ed.,  
Longman, New York, 1983, pp. 79-95

X-50

Ford Motor Credit Co. v. Swarens,  
447 SW 2d 533; 2 C.L.S.R. 347 (Court  
of Appeals of Kentucky 1969).

X-68

Pompeii Estates Inc. v. Consolidated  
Edison Co. of New York Inc., 7 C.L.S.R.  
518 (N.Y.S.C. 1977).

X-70

Stagg v. Bank of Breckenridge, 22 Atla.  
L. Rep. 269; 7 C.L.S.R. 529 (Summit  
County District Court 1979)

X-73

Independent School District No. 454,  
Fairmont, Minnesota v. Statistical  
Tabulating Corp., 359 F. Supp. 1095;  
5 C.L.S.R. 276 (U.S.D.C., ND Ill,  
May 31, 1973).

X-74

Accusystems, Inc. v. Honeywell Information  
Systems, Inc., (S.D.N.Y. Feb. 7, 1984).

X-77

Heintzman, Thomas G., "Recent Developments in the Law relating to the Recovery of Damages in Tort (Non-Personal Injury)", [1981] <u>L.S.U.C. Special Lectures</u> 237 at 246-53	X-88
Linden, A.M., <u>Canadian Tort Law</u> (3rd ed.), Toronto, 1981 at 157-60, 170-72.	X-96
<u>Tort Theories in Computer Litigation</u> , The Special Committee for Computers and the Law of the Association of the Bar of the City of New York.	X-104
<u>Samuels v. Davis</u> , [1943] 1 K.B. 526.	X-120
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### INTRODUCTORY NOTE

"Records show that only one in ten small firms can survive a major computer loss. The rest go out of business because they lose customers. It is estimated that the average company can survive only ten to 11 days without its computer, after which it loses as much as 91 percent of its business activities."

Nolan, "New Insurance Coverages for the Small Businessman," 69 A.B.A.J. 478, 480 (1983).

The materials for this session explore the liabilities arising from the use, mis-use and non-use of computers. This requires consideration of tort principles such as misrepresentation, detrimental reliance, Hedley Byrne principles and products liability, as well as examination of the remedies for breach of contract. However, a detailed examination of all aspects of the liability that arises is beyond the scope of these materials. The remedies for breach of contract, for example, touch virtually every issue in the law of contract, and it would be impossible to cover this material in the limited time available. Instead the materials examine some of the cases and a sampling of representative issues.

